

**567—65.8 (455B) Construction.** For purposes of these rules:

**65.8(1)** Construction of an animal feeding operation structure begins or an animal feeding operation structure is constructed when any of the following occurs:

- a.* Excavation for a proposed animal feeding operation structure, or excavation for footings for a proposed animal feeding operation structure.
- b.* Installation of forms for concrete for an animal feeding operation structure.
- c.* Installation of piping for movement of manure within or between animal feeding operation structures.

**65.8(2)** Construction does not begin upon occurrence of any of the following:

- a.* Removal of trees, brush, or other vegetative growth.
- b.* Construction of driveways or roads.
- c.* General earth moving for leveling or compacting at the site.
- d.* Installation of temporary utility services.

**65.8(3)** Prohibition on construction.

*a.* A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation, if the person is either of the following:

(1) A party to a pending action for a violation of this chapter concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) A habitual violator.

*b.* A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation for five years after the date of the last violation committed by a person or a confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code section 455B.191.

*c.* Paragraphs “*a*” and “*b*” shall not prohibit a person from completing the construction or expansion of an animal feeding operation structure, if either of the following applies:

(1) The person has an unexpired permit for the construction or expansion of the animal feeding operation structure.

(2) The person is not required to obtain a permit for the construction or expansion of the animal feeding operation structure.

*d.* A confinement feeding operation structure shall not be constructed on the one hundred year flood plain. Placing fill material on flood plain land to elevate the land above the one hundred year flood level will not be considered as removing the land from the one hundred year flood plain for the purpose of this paragraph.

*e.* A person shall not construct a confinement feeding operation structure on land that contains alluvial soils, according to the Soil Survey published by the Natural Resources Conservation Service of the United States Department of Agriculture, unless the person has received a declaratory order or a determination from the department of natural resources that the proposed location of the structure is not on the one hundred year flood plain. The declaratory order or determination may be obtained as follows:

(1) If the person does not apply for a construction permit as provided in Iowa Code section 459.303 and rule 567—65.9(455B), the person must petition the department for a declaratory order pursuant to Iowa Code section 17A.9 and 561—Chapter 6 to determine whether the location of the proposed confinement feeding operation structure is on the one hundred year flood plain. The person is strongly encouraged to contact the department prior to submitting the petition to determine the nature and extent of information required for the petition to be considered complete. To be considered complete, the petition must include all information pursuant to 567—Chapters 70 to 76 necessary to determine if the confinement feeding operation structure is proposed to be located on a one hundred year flood plain. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as flood plain and channel geometry. The department shall issue a declaratory

order in response to a complete petition, notwithstanding any other provision provided in Iowa Code section 17A.9 to the contrary, within 30 days from the date that the complete petition is filed with the department. The declaratory order shall state whether or not the proposed location is on the one hundred year flood plain.

(2) If the person does apply for a construction permit as provided in Iowa Code section 459.303, the person must identify in the application whether or not the land contains alluvial soils. The department shall determine if the confinement feeding operation structure is proposed to be located on the one hundred year flood plain. If the proposed location of the confinement feeding operation structure is on the one hundred year flood plain, the department shall disapprove the construction permit. In the event that the proposed location of the confinement feeding operation structure is not on the one hundred year flood plain, the department may issue a construction permit as provided in Iowa Code section 459.303 and rule 567—65.9(455B) if all other applicable criteria are satisfied.